Parker Hannifin Corporation *and* United Steelworkers of America, AFL-CIO-CLC. Case 10-CA-15175

November 16, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On August 14, 1980, Administrative Law Judge Irwin H. Socoloff issued the attached Decision in this proceeding. Thereafter, the General Counsel filed limited exceptions and a supporting brief, the Charging Party filed a statement adopting the position of the General Counsel, and Respondent filed a brief in answer to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions, briefs, and the statement of position and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Parker Hannifin Corporation, Huntsville, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

MEMBER JENKINS, dissenting:

I agree with the majority that Respondent violated Section 8(a)(1) of the Act by interrogating employees concerning their union activities and by threatening an employee with discharge if he cooperated with a Board investigation. Contrary to my colleagues, however, I believe that Respondent's reasons for issuing a written warning to employee Barbara Blanchard and for discharging her were pretextual, and that Respondent discriminated against Blanchard because of her union activities, in violation of Section 8(a)(1) and (3) of the Act.

The Administrative Law Judge found, and I agree, that the General Counsel established a *prima facie* case that Blanchard's discharge was unlawful. The background facts are as follows.

An election was held at Respondent's Huntsville, Alabama, plant on September 12, 1979.[1] The Union[2] lost the election, but did not file objections, and the Regional Director for Region 10 issued a Certification of Results of the Election in that case.

Barbara Blanchard was a leading union adherent during the election campaign, and Respondent knew of this leadership role. Blanchard arranged and attended union meetings, distributed and collected authorization cards, and wore union paraphernalia during the election campaign.[3] Indeed, Respondent interrogated Blanchard concerning her union activities. Supervisor Carter questioned her about how many signed authorization cards the Union had obtained, and why she wanted a union in the plant. Blanchard testified that Carter interrogated her every few days until the date of the election. It was this testimony of Blanchard's that the Administrative Law Judge credited as "crisp, detailed and convincing," and based on it he found Respondent unlawfully interrogated Blanchard as alleged.

Respondent did not terminate Blanchard until after the September election. On October 13, Plant Manager Still gave Blanchard a "final warning notice," which stated that "any further instances like this will result in termination." The "further instances" mentioned in the notice referred to an attachment, which recited two separate events, on October 11 and 12, respectively, when Supervisor Thomas observed Blanchard at employee Bishop's machine, and requested her to return to her work area. The attachment also noted that, although in her two previous performance reviews Blanchard had been warned about spending too much time away from her work station, her supervisor was still required to remind her to remain at her work station.[4] Almost 2 weeks later, on October 25, Supervisor Carter told Blanchard on three separate occasions to leave Bishop's machine and said to her, "Let's go." Blanchard remained for a moment to continue the conversation, at which time Carter told her she was terminated. Carter made a report of the incident, which he gave to Still who then met with Blanchard and Carter, and discharged Blanchard for continually staying away from her machine.

[1] All dates are in 1979 unless otherwise indicated.

[2] United Steelworkers of America, AFL-CIO-CLC.

[3] Respondent suggests that Blanchard's union leanings were confusing because, near the end of the campaign, she wore "vote no" buttons. However, Blanchard continued to wear prounion stickers and buttons, even while wearing the "vote no" buttons.

[4] The two incidents mentioned in the final warning notice were reported by Thomas, who was not Blanchard's usual supervisor. The "previous reviews" noted in the warning will be discussed below.

These facts show, as the Administrative Law Judge found, that Respondent knew of Blanchard's activities and harbored union animus which was particularly directed toward Blanchard through Respondent's repeated interrogations of her. These findings notwithstanding, the Administrative Law Judge concluded that Respondent rebutted the General Counsel's *prima facie* case by showing that Blanchard was not discharged for union activity, but because of her refusal to stay at her post and her defiance of supervisory orders to return to work. In so doing the Administrative Law Judge found no evidence of disparate treatment or pretextual reasoning for the warning or her discharge. Analysis of the relevant facts leads me to the conclusion that the Administrative Law Judge incorrectly decided this issue.

Blanchard worked for Respondent from January 1977 until her discharge at the end of October 1979. She worked under Jack Pruitt in the chucker department as a machine operator until April 1979, when she became an automatic bar machine operator under Carter's supervision. It was in April that Blanchard contacted the Union and shortly thereafter in May that Carter began interrogating her on a regular basis. The evidence reflects that Blanchard was generally a good employee, save for one deficiency. Thus, in various performance reviews in 1978 and 1979, Blanchard's supervisors noted that she needed to stay in her work area more. However, these reviews also indicate that if Blanchard's "problem" was longstanding, it was also long tolerated. Pruitt verbally warned Blanchard when she was in the chucker department about being away from her machine. Carter also warned her when she became an employee in the automatic department. And both supervisors spoke to her on other occasions to remind her to return to her machine. Yet *no* discipline was ever instituted against her. Indeed, Respondent had a very liberal policy on breaks; whatever the rule Respondent had on the issue, the practice was for employees to take frequent breaks as long as they were of short duration; i.e., 5 or 10 minutes. Furthermore, there was never any discipline imposed on any employee for breaking any company rule on breaks or other matters. Indeed, the only warning notices besides the one issued to Blanchard also were issued in October 1979. Both of these were for employees in the chucker department and indicated "production" as the problem area. Each employee had been warned on August 24 about production and staying at his machine on that date, and the two notices issued thereafter indicated the same problem existed and, if there were no improvement, "disciplinary action will be taken." These notices contrast sharply with Blanchard's "final warning" notice, which checked off "personal conduct" and "indifference," not "production" as the problem, and which was labeled a "final" warning notice.[5]

Blanchard was singled out in more ways than one. Thus, although Blanchard was timed by Thomas to see how long she remained away from her station, no other employee had ever been timed.[6] Further, Blanchard was not the only employee to report back to her position after lunch on the date of discharge. The Administrative Law Judge himself found that at least five or six employees were still away from their work station some 7 minutes after the break bell had rung. Yet not one other employee was warned or otherwise disciplined for such absence.

These facts clearly indicate that Respondent has seized on these October incidents as a pretext to rid itself of an outspoken union adherent. Its long tolerance of Blanchard's behavior prior to the union campaign[7] and its disparate treatment of Blanchard indicate that its proffered reasons for issuing the warning and for discharging Blanchard were not the real ones. In addition, Respondent's union animus can hardly be overlooked. Respondent interrogated Blanchard about her union activities and the sympathies of other employees. Particularly telling is Respondent's naked threat to employee Howard, whom Blanchard had requested to give a statement to the Board, that he would be discharged if he cooperated with the Board's investigation. Respondent's knowledge of Blanchard's union activities, and the above course of conduct, establishes the General Counsel's *prima facie* case. As demonstrated, Respondent's defense is clearly pretextual. Accordingly, I would find that Respondent violated Section 8(a)(3) and (1) of the Act.

[5] It should be noted these three notices are the *only* ones issued by Respondent from September 1978 to October 1979. A termination notice was issued to an employee in October 1978, but this was for a probationary employee who had been previously terminated and rehired. He was discharged for being away from his work station and producing 1,760 scrap parts. This situation is quite different from that of Blanchard.

[6] Pruitt stated that he had trouble in his department in February 1979 with employees' being away from their machines too long. He stated that he told them to stay closer to their machines, but there is no indication that employees received warnings or that they were timed. Carter also testified that he had ordered employees to return to their jobs, and that only Blanchard gave him arguments.

[7] *East Towne Chrysler Motors, Inc.*, 238 NLRB 1379 (1978).

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge: Upon a charge filed on October 31, 1979, by United Steelworkers of America, AFL-CIO-CLC, herein called the Union, against Parker Hannifin Corporation, herein

called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10, issued a complaint dated December 10, 1979, alleging violations by Respondent of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Respondent, by its answer, denied the commission of any unfair labor practices.

Pursuant to notice, hearing was held before me in Huntsville, Alabama, on June 2 and 5, 1980, at which the General Counsel and Respondent were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the parties filed briefs which have been duly considered.

Upon the entire record[1] in this case and from my observations of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, an Ohio corporation, has an office and place of business in Huntsville, Alabama, where it is engaged in the manufacture and sale of steel fittings. During the year ending December 31, 1978, a representative period, Respondent, in the course and conduct of its business operations, sold and shipped from its Huntsville, Alabama, facility finished products valued in excess of $50,000 directly to customers located outside the State of Alabama. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

United Steelworkers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

On July 18, 1979, the Union filed a petition with the Board, seeking an election among Respondent's Huntsville, Alabama, plant employees (Case 10-RC-11835). Thereafter, the Board, on September 13, 1979, conducted an election which was lost by the Union by a vote of 230-to-84. Postelection objections were not filed and, accordingly, on September 21, the Regional Director for Region 10 issued a Certification of Results in that case.

Some 6 weeks after the election, on October 25, 1979, Respondent discharged employee Barbara Blanchard, one of the principal supporters of the Union during the preelection period. In this proceeding, the General Counsel contends that Blanchard was fired because of her union activities, which were well known to Respondent, in violation of Section 8(a)(3) of the Act. Respondent asserts that it discharged Blanchard solely because of her proclivity to leave her work area for lengthy periods of time and her defiance of the instructions of her supervisors to return to work. Also at issue is whether Respondent violated Section 8(a)(1) of the Act by interrogating Blanchard concerning her union membership, activities, and desires and the union membership, activities, and desires of her fellow employees; threatening Blanchard that it would move its facility if the employees opted for union representation and threatening employee Stanley Howard that he would be discharged if he cooperated with the Board's investigation of the Blanchard discharge. The General Counsel further contends, and Respondent denies that when, on October 13, 1979, Respondent issued a written warning notice to Blanchard, some 12 days before her discharge, it did so for unlawful antiunion reasons.

B. *Facts*[2] *and Conclusions*

1. The 8(a)(1) allegations

Barbara Blanchard was employed by Respondent from January 1977 to October 1979 when, as noted, she was discharged. Until March 1979, she worked as a machine operator in the chucker department under the supervision of Jack Pruitt. Thereafter, Blanchard performed as a machine operator in Respondent's automatic department where Billy Carter served as her supervisor.[3]

In April 1979, Blanchard and her brother contacted a representative of the Union and they scheduled employee meetings. During the course of the ensuing representation campaign, Blanchard attended union meetings and distributed authorization cards to her fellow employees. In all, she collected 50 to 100 signed cards. At work, she wore some six or seven union buttons, for a period of months, on her shirt and attached to her purse. She also wore a Steelworkers bumper sticker across her rear.[4]

Blanchard testified that, early in May 1979, Carter asked her how many signed cards she had obtained. He further inquired as to why she wanted a union in the plant. According to Blanchard, Carter, thereafter, and until the election, asked her those same questions every few days. Carter, in his testimony, denied that he ever questioned Blanchard with respect to her union activities or desires.

According to Blanchard's further testimony, in early October, following the election, she visited General Manager Don Gerosa to protest the contents of her most recent employee review. When Gerosa refused to discuss that matter before first speaking to her supervisor, Blanchard stated that that was one reason a union was needed in the plant, so that employees who had complaints would be heard. At that point, Blanchard testified, Gerosa stated "something to the effect of, 'I've been wanting to talk to you about why you've been wanting a union in here.'" After further discussion, "He went on to

[1] Respondent's post-hearing motion to amend, in certain respects, the transcript of proceedings, is hereby granted.

[2] The factfindings contained herein are based on a composite of the documentary and testimonial evidence presented at the hearing. Where necessary to do so in order to resolve specific testimonial conflict, credibility resolutions have been set forth *supra*.

[3] The complaint alleges, and the answer admits, that Pruitt, Carter, and Respondent's general manager, Don Gerosa, were, at all times material herein, supervisors within the meaning of Sec. 2(11) of the Act.

[4] For the final 2 weeks of the campaign, in addition to the union insignia, Blanchard wore a "Vote No" button.

remind me of the large plot of land down in Jacksonville, Alabama, that Parker-Hannifin had just bought and was building a plant on and told me it was three times the size of the place that we have here in Huntsville, and finally ended by saying that Parker-Hannifin in Huntsville wouldn't ever become union." Gerosa, in his testimony, confirmed the fact of the foregoing meeting with Blanchard but denied making the remarks attributed to him by Blanchard. Thus, he testified that he did not ask Blanchard why she supported the Union or stated or implied that the Huntsville plant would be moved if the Union gained representation rights. Gerosa explained that construction of the new Jacksonville plant had begun in the fall of 1978 and completed by August 1979, when that plant became operational. Further, according to Gerosa's uncontradicted testimony, during that entire period, and during the election campaign itself, he repeatedly assured the unit employees that, while certain equipment would be moved from Huntsville to Jacksonville, not a single job would be lost at Huntsville.

Employee Stanley Howard testified that on November 8 he informed Supervisor Pruitt that Blanchard had requested that he, Howard, provide a statement to the National Labor Relations Board. Howard asked Pruitt if he thought it would be wise to do so. According to Howard, Pruitt stated "that if it was him, he wouldn't volunteer any information. He'd wait until I got subpoenaed because I'd get fired." Pruitt's version of the conversation was quite different. He testified that, when Howard first approached him about the matter, he told the employee that he, Pruitt, could not get involved in it. Pruitt then sought guidance from Gerosa and he testified that 10 minutes after his first conversation with Howard he approached the employee and told him that if he, Howard, volunteered to sign a statement chances were he "might have to go to court." Pruitt denied issuing a threat to Howard but, rather, claimed that he told him that it was "up to him to do what he wanted."

As Blanchard, Howard, Carter, Pruitt, and Gerosa all appeared to me to be testifying in a truthful manner, I am unable to resolve the foregoing conflicts in testimony by resort to demeanor findings. Blanchard's testimony concerning the alleged interrogations by Carter was crisp, detailed, and convincing and I credit it over the general denial of Carter. On the other hand, Blanchard testified in much more vague fashion concerning her meeting with Gerosa. In light of Gerosa's uncontradicted explanation of the context of the conversation, his denial that, during this postelection meeting, he stated or implied that the plant would be moved has the ring of truth. I likewise credit his testimony denying that he questioned Blanchard concerning her reasons for having supported the Union. Finally, I credit Howard, an apparently disinterested witness, with respect to his testimony concerning the November 8 incident. Thus, I find Howard's version of that event clearer and more convincing than the vaguer narration of Pruitt.

Based on the foregoing, I find that Respondent, by its supervisor, Carter, violated Section 8(a)(1) of the Act by interrogating Blanchard concerning her union activities and sympathies and those of her fellow employees. Respondent further violated that section of the Act by threatening employee Howard, through Supervisor Pruitt, with discharge if he cooperated with a Board investigation.

2. The Blanchard discharge

In light of Blanchard's activities on behalf of the Union, as detailed, *infra*; Carter's repeated interrogations of her concerning those activities and the testimony of several of Respondent's officials that they knew, during the course of the campaign, that Blanchard was a leading union adherent, I conclude that the General Counsel has established a *prima facie* case of unlawful discharge under the Act. However, as I am entirely persuaded by the evidence offered by Respondent in defense, as set forth below, that Blanchard was discharged for job related, and not union related, reasons, I further conclude that her firing was not violative of the statute.

Respondent permits its machine operators to take work breaks as they wish, for purposes of visiting the bathroom, the soda and candy machines, or to say "hello" to another worker. Several of Respondent's witnesses testified that the employees have been instructed to limit such breaks to a duration of 5 minutes. Blanchard herself described the time limitation as "a reasonable period" and "maybe about five minutes." Yet, numerous employee and supervisory witnesses in this case testified that, not only did Blanchard take many more breaks than the other employees but that those breaks often lasted for periods of 30 minutes and longer. Employee Curtis Blackwell, who frequently was required to oversee Blanchard's machines while she was "on break," credibly testified that "there's been days where she was gone four hours out of eight." Thus, in the months preceeding the discharge, Blackwell complained to his supervisor, Billy Carter, that he, Blackwell, was spending so much time keeping watch over Blanchard's machines, while she was away "on break," that he did not have time to adequately perform his own duties.[5]

Performance reviews of Blanchard for the years 1978 and 1979, issued by her supervisors, uniformly contained a notation that the employee was not spending sufficient time in her work area. Early in 1979, while she still worked in the chucker department, Blanchard received a verbal warning from her then supervisor, Pruitt, for failure to stay at her machine. In the spring of that year, after transferring to the automatic department, she received a verbal warning from Supervisor Carter for being out of her work area for long periods of time. In addition, according to the credited testimony of Pruitt and Carter, they found it necessary frequently to speak to Blanchard concerning her proclivity to stay away from her work area and to instruct her to return to her job duties. Carter further testified that Blanchard often refused to accept such directives. Blanchard, in her testimony, conceded that there were occasions when she

[5] Although machines in the automatic department are not hand-fed, the presence of the operators is essential as they are required to check the finished products for defective parts. If the machine is running such parts, the operator must sharpen the tools or make other adjustments. Operators must also watch the machines to prevent damage to same as they may, among other things, catch on fire.

would not, when so instructed, return to her work station, but would, instead, "ask to finish my business."

Carter credibly testified that in the months preceding her discharge Blanchard exhibited a heightened tendency to remain away from her job duties. Thus, in September, Carter had to speak to Blanchard as many as two or three times in a day about this subject. That month, he gave her another verbal warning for the same offense. Employee Mark Bishop, a machine operator in the chucker department, testified that, during this period, Blanchard would visit him, at his work station four or five times per night, and stay for periods of up to 20 minutes, or until instructed by a supervisor to return to her machine. This practice continued until the night she was discharged.

On October 13, Blanchard received a "final warning notice" from Plant Manager Jack Stall after Stall was informed, by substitute Supervisor James Thomas, that Blanchard was staying away from her work station, at Bishop's machine, thus causing employee Blackwell to spend his time performing her job functions. On October 25, during the first half of the shift, Carter instructed Blanchard on three separate occasions to leave Bishop's machine and return to her work area. Immediately after the lunchbreak, when Carter, for the fourth time that day, found Blanchard at Bishop's machine, he approached her and said, "let's go." She, nonetheless, continued her conversation with Bishop, at which point, Carter told her that she was terminated.[6] The supervisor made notes of the occurrences of that day and delivered same to Stall. At 10 p.m. that night, Stall met with Blanchard and Carter, read to Blanchard the notes that Carter had prepared, and discharged the employee for continually staying away from her machine.

In light of the above, I conclude that the General Counsel's *prima facie* case has been rebutted and that Blanchard was warned, and then discharged not because of her union activities, but because, as Stall testified, of her consistent refusal to stay at her work area and do her job and her defiance of the instructions of her supervisors to return to work.[7] Contrary to the contentions of the General Counsel, the record does not contain evidence showing that Blanchard was treated differently than other, similarly situated, employees. Nor does the nature of Blanchard's dereliction, or the manner in which Respondent chose to deal with same, suggest that it was merely seized upon as a pretext. The discharge was, thus, not violative of the Act.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Respondent Parker Hannifin Corporation is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Steelworkers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating an employee concerning her union membership, activities, and desires, and the union membership, activities, and desires of other employees, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By threatening to discharge an employee if he cooperated with a Board investigation, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not otherwise violated the Act, as alleged in the complaint.

Upon the foregoing findings of fact, and conclusions of law, and upon the entire record, pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[8]

The Respondent, Parker Hannifin Corporation, Huntsville, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union membership, activities, and desires, and the union membership, activities, and desires of other employees.

(b) Threatening to discharge employees if they cooperate with a Board investigation.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act to engage in concerted activities for their mutual aid and protection, or to refrain from such activity.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act:

[6] At that time, about 7 minutes after the bell had rung, signifying the end of the lunchbreak, some five or six employees had not yet returned to their work stations.

[7] In reaching this conclusion, I do not credit Blanchard's assertion that, after receiving her final warning notice, she "tightened up considerably" on her practice of leaving her work area, prompting Carter to tell her that she had made improvement.

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Post at its facility located in Huntsville, Alabama, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT interrogate our employees concerning their union membership, activities, or desires, or the union membership, activities, or desires of other employees.

WE WILL NOT threaten to discharge our employees if they cooperate with a Board investigation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

PARKER HANNIFIN CORPORATION